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ALHARBI, AHMED, et al.,)	
)	Case No.: 18-cv-2435 (BMC)
)	
Plaintiffs,)	Hon. Judge Cogan
)	
v.)	
)	
MILLER, STEPHEN, et al.,)	
)	
)	
Defendants.)	
)	

JULIE GOLDBERG, ESQ.
Goldberg & Associates P.C.
5586 Broadway
Third Floor
Bronx, New York 10463
Tel: (718) 432-1022
Fax: (718) 432-1044
Email: uscis@goldbergimmigration.com

Attorney for Plaintiffs

INTRODUCTION

Plaintiffs ALHARBI, AHMED, et al. (“Plaintiffs”) hereby move for a preliminary injunction as set forth below and for the reasons set forth in the accompanying Memorandum of Law in Support of Plaintiff’s Motion for a Preliminary Injunction. Fed. R. Civ. P. 65(a). Plaintiffs seek to restrain and enjoin Defendants from proceeding in this case with former Chief of Staff to the Attorney General Matthew G. Whitaker appearing in the official capacity of the Acting Attorney General. Additionally, Plaintiffs seek to substitute Deputy Attorney General Rod J. Rosenstein as Acting Attorney General in his official capacity in place of former Attorney General Jefferson B. Sessions III, under Federal Rule of Civil Procedure 25.

1. On November 7, 2018, Jefferson B. Sessions III submitted his resignation as United States Attorney General. *See* Letter from Jefferson B. Sessions III to President Donald J. Trump (Nov. 7, 2018), available at <https://cnn.it/2SVkdaQ> (last accessed Nov. 13, 2018).

2. Shortly thereafter, President Trump appointed Whitaker as the Acting Attorney General. *See* Donald J. Trump (@realDonaldTrump), Twitter (Nov. 7, 2018, 11:44AM), <https://twitter.com/realDonaldTrump/status/1060256619383193601>.

3. As demonstrated in the Memorandum, the appointment of Whitaker as Acting Attorney General instead of Deputy Attorney General Rosenstein violates the Attorney General Succession Act, 28 U.S.C. § 508, as well as the Appointments Clause of the Constitution, U.S. Const. art. II, § 2, cl.

4. An injunction is warranted because Plaintiffs are likely to show that Whitaker’s appointment is unlawful, allowing Whitaker to act as Attorney General will cause Plaintiff

irreparable injury in multiple ways, the balance of hardships are in Plaintiffs' favor, and the appointment of the appropriate Acting Attorney General according to the requirements of the U.S. Code and Constitution is of immense public interest due to the Attorney General's plenary authority over federal litigation, as well as substantial policymaking and oversight power.

6. If the Court determines that this Motion should properly be considered a Motion to Substitute a Party under Federal Rule of Civil Procedure 25, Plaintiffs request that the Court order substitution of Deputy Attorney General Rosenstein to appear in his official capacity as Acting Attorney General as the successor to former Attorney General Sessions. Because, as explained in the Memorandum, Rosenstein is the proper successor to Sessions, this Court should use its discretion to "order substitution at any time" under Rule 25(d) to substitute Deputy Attorney General Rosenstein as Acting Attorney General in his official capacity.

7. Once Whitaker appears as Acting Attorney General in this case, it will be difficult to unwind any positions that the Attorney General takes regarding the complaint.

8. The issues underlying the Motion for Preliminary Injunction and the Motion to Substitute are purely legal, and, as a matter of judicial efficiency, the issues underlying both motions are the same. Thus, consideration of the motion for preliminary injunction or the motion for substitution will involve review of the same question of law, namely, the legality of former Chief of Staff Whitaker's appointment as Acting Attorney General.

For the foregoing reasons, Plaintiff respectfully requests that this Court:

(a) issue a judgment under the Declaratory Judgment Act, 28 U.S.C. § 2201, declaring that Deputy Attorney General Rod J. Rosenstein is the Acting Attorney General of the United States, and recognizing Deputy Attorney General Rosenstein's authority to issue a report on the

enforcement of laws to Congress under 28 U.S.C. § 530D regarding the Department of Justice's position regarding 26 U.S.C. § 5000A(a);

(b) declare that former Chief of Staff to the Attorney General Matthew G. Whitaker is not the Acting Attorney General;

(c) grant the motion for preliminary injunction enjoining Whitaker from supervising this matter as Acting Attorney General or appearing in an official capacity as Acting Attorney General in this matter;

(d) substitute Rod J. Rosenstein in his capacity as Acting Attorney General for Attorney General Jefferson B. Sessions, III, as a Defendant in this matter;

(e) grant such other and further relief as this Court may deem just and proper.

Plaintiffs' counsel reached out to Defendants' counsel via email on November 29, 2019, and Defendants' counsel indicated their intention to oppose this motion.

Dated: November 29, 2018
Bronx, New York

Respectfully submitted,

/s/ Julie Goldberg, Esq.
JULIE GOLDBERG, ESQ.
GOLDBERG AND ASSOCIATES
5586 Broadway
Third Floor
Bronx, New York 10463
Tel: (718) 432-1022
Fax: (718) 432-1044
Email: uscis@goldbergimmigration.com

CERTIFICATE OF SERVICE

I, Julie A. Greenberg, an attorney admitted to practice in the State of California and the Managing Attorney of the firm of Greenberg and Associates, hereby certify that: On the 29th day of November 2018, I have caused service of the of the PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION, AND TO SUBSTITUTE DEFENDANT, dated November 29, 2018, to be made by electronic filing with the Clerk of the Court using the CM/ECF System, which will send a Notice of Electronic Filing to all parties with an e-mail address of record, who have appeared and consent to electronic service in this action.

Dated: November 29, 2018

Respectfully submitted,

/s/ Julie A. Goldberg, Esq.
JULIE A. GOLDBERG, ESQ.
GOLDBERG AND ASSOCIATES
5586 Broadway
Third Floor
Bronx, New York 10463
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Fax: (718) 432-1044
Email: uscis@goldbergimmigration.com